

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

January 19, 2016

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter to the Department of Business Oversight (Department) dated November 23, 2015. _____ has requested clarification regarding the licensing requirements under the Money Transmission Act (Fin. Code, § 2000 et seq.).

BACKGROUND

In your letter, you stated that _____ is a 501(c)(3) nonprofit organization that assists consumers with financial education and debt management plans. _____ is a member of the National Foundation of Credit Counseling, as well as certified by the Council on Accreditation, a certifying organization for nonprofits.

_____ counselors work with the consumer to prepare a financial assessment and tailor the counseling and education session around the willingness and financial capacity of the consumer. In cases where appropriate, the counselor will recommend a Debt Management Program (Program). If the consumer determines that he or she would benefit from participation in a Program, a proposal is submitted to the consumer's creditors. If both the creditor and consumer agree to the terms as requested in the proposal, the consumer enters into an agreement with _____ to make single, monthly payments to _____, which are then disbursed to the creditors as agreed upon in the Program. Creditors do not forgive this debt, but provide a reduction in the amount of interest charged as a concession to ensure the receipt of an on-time monthly payment from the consumer.

_____ also claims that it is exempt from the licensing requirements under Section 12104 of the Check Sellers, Bill Payers and Proraters Law (Fin. Code, § 12000 et seq.). Among other things, Section 12104 requires a nonprofit community service organization that is seeking an exemption from licensing, to submit certain forms and financial statements to the Department on an annual basis. _____ has submitted the information required by Section 12104.

MONEY TRANSMISSION ACT

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-7205

One Sansome Street, Suite 600
San Francisco, CA 94104-4428
(415) 972-8565

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344
(213) 576-7500

1350 Front Street, Room 2034
San Diego, CA 92101-3697
(619) 525-4233

45 Fremont Street, Suite 1700
San Francisco, CA 94105
(415) 263-8500

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
(213) 897-2085

7575 Metropolitan Drive, Suite 108
San Diego, CA 92108
(619) 682-7227

Financial Code section 2003(q)(3) defines “money transmission” to include receiving money for transmission. Financial Code section 2003(u) defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

Financial Code section 2011 authorizes the Commissioner to exempt from the Money Transmission Act any person, if the Commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary.

Because _____ receives money from consumers to disburse to a consumer’s creditors as part of a Program, _____’s activities would fall under the definition of money transmission unless it is exempt.

In October 2015, the Department adopted a regulation that specifies exemptions from the Money Transmission Act. (Cal. Code Regs., tit. 10, § 80.3002.) Section 80.3002(a) provides, in relevant part:

The Commissioner finds that exempting the persons and transactions specified in subdivision (a) of this Section from the Money Transmission Act is in the public interest and that the regulation of such persons and transactions is not necessary for the purposes of the Money Transmission Act. Accordingly, in addition to the persons exempt pursuant to Financial Code Section 2010, the Commissioner exempts from the Money Transmission Act:

(2) A public benefit nonprofit which has received recognition of tax exemption under Internal Revenue Code Section 501(c)(3);

***, and

(4) a nonprofit community service organization that meets all of the criteria in Financial Code Section 12104 of the Check Sellers, Bill Payers and Proraters Law.

CONCLUSION

Because _____ is an Internal Revenue Code Section 501(c)(3) nonprofit organization and because _____ has filed the annual reports and met other criteria required for an exemption under Financial Code section 12104 of the Check Sellers, Bill Payers and Proraters Law, _____ is exempt from the Money Transmission Act pursuant to

subdivisions (a)(2) and (a)(4) of section 80.3002 of Title 10 of the California Code of Regulations.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services is altered in the future.

If you have any questions, please feel free to contact me at (415) 263-8528.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Jennifer L.W. Rumberger
Senior Counsel

JLWR:acp

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco